

REMARKS/ARGUMENTS

Claims 1-48 are pending in the application, and claims 2-9 and 25-44 were previously withdrawn from consideration. By this amendment, claims 1, 45, and 48 have been amended, and new claims 49-56 have been added. Furthermore, withdrawn claims 2, 27, 29, and 31-33 have been amended.

Applicants believe the amendments made herein add no new matter. Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto. Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

Claim 45 stands rejected under 35 U.S.C. § 112, ¶ 1, as failing to comply with the written description requirement. The rejection is respectfully traversed.

The written description requirement requires that the specification describes the invention in sufficient detail to show one skilled in the art that the inventor possessed the claimed invention at the time of filing. The Office Action states that the original disclosure is silent with respect to a cabinet assembly comprising both interconnecting panels and interconnected frame elements, which are required by claim 45. The Applicants maintain that the originally filed specification does provide support for claim 45, thereby fulfilling the written description requirement for claim 45. The Office Action suggests that interconnecting panels and interconnected frame elements are presented in the specification as alternative embodiments. However, they can be present in the same embodiment, as evidenced by paragraph [0051] of the originally filed specification (emphasis added):

“The term ‘cabinet assembly’ is utilized herein to define the structural assembly that is formed from various structural components that can include a *framework*, enclosure panels, *interconnecting panel elements*, securing fasteners, support surfaces, mounting and assembly brackets, and the like. As will become apparent to those skilled in the art, the materials

and particular structural details of the cabinet assembly 22 can vary considerably and yet fall within the scope of the present invention.”

A framework can include interconnected frame elements; therefore, the specification as originally filed provides support for both interconnecting panels and interconnected frame elements and satisfies the written description requirement. Furthermore, it is immaterial to the invention whether the panels are interconnected to each other or mounted to the frame elements. Regardless, claim 1 has been amended to remove the “interconnecting” limitation for the panels, thereby rendering this rejection moot. In making the amendment to claim 1, the Applicants do not concede that the specification fails the written description requirement for the combination of interconnecting panels and interconnected frame elements.

Claims 1, 10-24, and 45-48 stand rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is respectfully traversed.

The Office Action asserts that claim 1 fails to define the metes and bounds of the claimed protection sought. Resolution of this issue is controlled by *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1 U.S.P.Q.2d (BNA) 1081 (Fed. Cir. 1986). In *Orthokinetics*, the patent at issue disclosed a collapsible pediatric wheelchair that facilitated the placing of wheelchair-bound persons, particularly children, in and out of an automobile. Claim 1 of the patent at issue reads, in pertinent part, “In a wheel chair having a seat portion, a front leg portion, and a rear wheel assembly, the improvement wherein said front leg portion is so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats thereof...” An alleged infringer defended on the grounds that claim 1 was invalid under 35 U.S.C. § 112, ¶ 2 because the phrase ‘so dimensioned as to be insertable through the space between the doorframe of an automobile in one of the seats thereof’ was indefinite. The Federal Circuit disagreed.

A decision on whether a claim is invalid under § 112, 2d para., requires a determination of whether those skilled in the art would understand what is claimed when the claim is read in light of the

specification. ... It is undisputed that the claims require that one desiring to build and use a travel chair must measure the space between the selected automobile's doorframe and its seat and then dimension the front legs of the travel chair so they will fit in that particular space in that particular automobile. Orthokinetics' witnesses, who were skilled in the art, testified that such a task is evident from the specification and that one of ordinary skill in the art would easily have been able to determine the appropriate dimensions....The claims were intended to cover the use of the invention with various types of automobiles. That a particular chair on which the claims read may fit within some automobiles and not others is of no moment. The phrase "so dimensioned" is as accurate as the subject matter permits, automobiles being of various sizes.... As long as those of ordinary skill in the art realized that the dimensions could be easily obtained, § 112, 2d para. requires nothing more. The patent law does not require that all possible lengths corresponding to the spaces in hundreds of different automobiles be listed in the patent, let alone that they be listed in the claims. (Citations omitted.)

Orthokinetics at 1576.

This is precisely the issue here. Claim 1 calls for a plurality of panels that define a washer discrete space so dimensioned as to house a washing machine and a clothes dryer discrete space so dimensioned as to house a clothes dryer. This language is indistinguishable from the language in *Orthokinetics* calling for a leg portion to be 'so dimensioned' as to be insertable through the space between an automobile doorframe and seat. Claim 1 calls for a plurality of panels defining a space 'so dimensioned' as to be able to house either a washing machine or a clothes dryer.

In *Orthokinetics*, the Court acknowledged that the claims were intended to cover the use of the invention with various types of automobiles and recognized that the patent law does not require that all possible dimensions be listed in the patent, let alone the claims. The phrase 'so dimensioned' is as accurate as the subject matter permits as automobiles are of various sizes. The same is true for the invention of the present application. The Office action accurately notes that the appliances are readily available in various sizes. The size of the appliance is analogous to the size of the automobile, which can have sizes ranging from, for example, compact cars to

full size cars to sport utility vehicles to commercial trucks. Thus, the phrase ‘so dimensioned’ is as accurate as the subject matter permits.

The Office Action further asserts that the claimed spaces do not clearly set forth the dimensions claimed. The fact that there are no specific dimensions in the claims is of no weight. In both *Orthokinetics* and the current application, while there are no stated dimensions, the dimensions can be easily obtained by those of ordinary skill in the art. *Orthokinetics* recognized this when they stated, “A decision on whether a claim is invalid under § 112, 2d para., requires a determination of whether those skilled in the art would understand what is claimed when the claim is read in light of the specification. ... As long as those of ordinary skill in the art realized that the dimensions could be easily obtained, § 112, 2d para. requires nothing more.”

Orthokinetics at 1576. It is of no issue that specific dimensions are not stated. What is of issue is whether a person of ordinary skill in the art could easily determine the dimensions of a space based upon a selected washing machine and/or clothes dryer as claimed, especially in light of the specification. The specification clearly shows in Figs. 1, 2, 3, 21, 22, and 23 and describes in the corresponding text various cabinets having discrete spaces so dimensioned as to house a washing machine and a clothes dryer. Thus, the person of ordinary skill in the art could easily obtain the dimensions for the discrete space defined by the panels of the cabinet such that the discrete space could house a washing machine or dryer.

The relevant portion of the *Orthokinetics* holding has been recently affirmed in *Young v. Lumenis, Inc.*, 2005 U.S. Dist. LEXIS 27792 (S.D. Ohio 2005) and *InterTrust Techs. Corp. v. Microsoft Corp.*, 275 F. Supp. 2d 1031 (N.D. Cal. 2003). In *Young*, the alleged infringer asserted that the phrase ‘about three millimeters’ used to describe the relative distance between first and second circumferential incisions in a cat is indefinite and relied primarily on two cases. The Young Court disagreed and relied in part on *Orthokinetics* in rendering the phrase ‘about three millimeters’ definite. In particular, the Young Court, referring to *Orthokinetics*, stated, “The Federal Circuit, considering similar allegations of indefiniteness, has permitted approximate measurements if the words used are ‘as accurate as the subject matter permits.’” *Young* at 24 (citation omitted). The Young Court determined that the phrase in question was as accurate as the subject matter permitted, given cat size variation. “...In light of the specification,

Figure 2 and variation inherent in cat sizes, the Young Court finds that one skilled in the art would know where to make the second incision.” *Young* at 26. Similarly, the ‘so dimensioned’ language in the present application is as accurate as the subject matter permits, given the variation in sizes of washing machines and clothes dryers. The InterTrust Court also relied on *Orthokinetics* in denying the Indefinite Motion of the alleged infringer. The InterTrust Court stated, “Nor are the claims at issue indefinite because they use a term that requires an evaluation of the context in which it is used or describes a range of circumstances.” *InterTrust* at 1045.

The Office Action further contends that the Applicants’ attempt to claim a void based on the intended use of a washer or dryer fails to particularly point out and distinctly claim the cabinet structure. On the contrary, the Applicants are not claiming a void; rather, in claim 1, the Applicants claim an integrated laundry center comprising an integrated cabinet assembly. The integrated cabinet assembly, which is a structural element, is described as having panels, which are structural elements, that define voids (i.e., the discrete spaces), two of which are limited to spaces that are so dimensioned as to house a washing machine or a clothes dryer. Thus, claim 1 does not actually claim the discrete space; it claims an integrated cabinet assembly comprising a plurality of panels. In fact, in the July 27, 2005 amendment, the panels were added to claim 1 to positively claim the structure that defines the discrete spaces of the integrated cabinet assembly. Furthermore, the size limitations on two of the discrete spaces do not merely demonstrate intended use but provide physical size requirements for the integrated cabinet assembly, as discussed above in greater detail.

For at least the reasons discussed above, claim 1 is not indefinite and is patentable, and because claims 10-24 and 45-48 depend from claim 1, these claims are also not indefinite for at least the same reasons.

Claim 48 has been amended to change “the washing machine and the clothes washer” to “the washing machine and the clothes dryer.” The double recitation of a washing machine/washer was a typographical error that has been corrected by this amendment. As a result, Applicants request withdrawal of the rejection of claim 48.

Claims 1, 10, 12-14, 20, and 45-47 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Patent Application Publication No. 09-010492 to Sanka ("Sanka"). The rejection is respectfully traversed.

Sanka discloses a cabinet (20) having a lower section (B) for storing a washing machine (40) and an upper section (A) defining a clothes drying chamber. Items to be dried are placed in the upper section (A), and a clothes dryer (30) circulates air through the upper section (A) to dry the clothes. The upper section (A) and the lower section (B) are separated by a partition (70). Alternatively, the upper section (A) can house other types of clothes dryers, such as a rotating drum type clothes dryer (see paragraph [0032]). The cabinet (20) is said to be effective for use in a narrow space and excels in space efficiency (see paragraph [0037]).

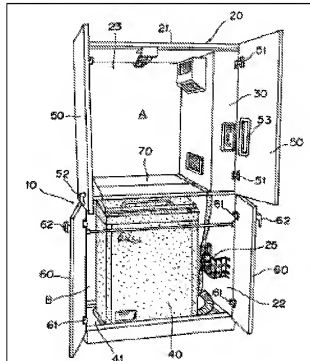


FIG. 1 OF SANKA

Claim 1 calls for an integrated laundry center comprising an integrated cabinet assembly having a plurality of panels that define a plurality of discrete spaces. The discrete spaces include a washer discrete space so dimensioned as to house a washing machine, a clothes dryer discrete space so dimensioned as to house a clothes dryer, and at least one supplemental drying discrete space. An air moving device is arranged to deliver air to the supplemental drying discrete space. As Sanka does not disclose every claim element, the anticipation rejection must fail.

The Office Action describes Sanka as disclosing a laundry cabinet with panels defining a space capable of housing a washer (40), a discrete space (A) capable of housing a clothes dryer, and an air moving device arranged to deliver air into and out of its own discrete space and at least part of space (A). This description mischaracterizes Sanka. Sanka discloses using *either* a rotating drum type clothes dryer in the space (A) *or* using the space (A) with the air moving

device (30) but not *both* (see paragraph [0032]). In other words, the space (A) can be used for either housing the rotating drum type clothes dryer or for providing a space through which air from the air moving device (30) circulates for drying fabric items received by the space (A).

Furthermore, the air moving device (30) does not have its own discrete space separate from the space (A). The Applicants are unsure of the space to which the Office Action refers as the "own discrete space" for the air moving device (30). If the Office Action is referring to the space within the air moving device (30), this space does not qualify as a discrete space of the laundry cabinet as this space is internal to the air moving device and is not defined by the panels of the laundry cabinet. Additionally, fabric items to be dried or otherwise treated by the air from the air moving device (30) cannot be placed inside the air moving device (30).

Sanka, therefore, discloses only two discrete spaces: a first space so dimensioned as to house the washing machine and a second space so dimensioned as to house the clothes dryer or for use with the air moving device. Sanka does *not* disclose a cabinet assembly with panels that define three discrete spaces: a first so dimensioned as to house a washing machine, a second so dimensioned as to house a clothes dryer, and a third to receive air from the air moving device, as specified in claim 1.

The Office Action states that the claimed discrete spaces are construed to read on any void in a cabinet having a minimum size capable of housing a washer, a clothes dryer, and an air moving device and that the discrete spaces are given their broadest reasonable interpretation which reads on plural discrete spaces which cumulatively define a single discrete space. Firstly, for clarification, claim 1 does not require the supplemental drying space to be so dimensioned as to house the air moving device; claim 1 only requires the air moving device be arranged to deliver air to the supplemental drying space. Secondly, even giving the discrete spaces the interpretation stated in the Office Action, Sanka does not anticipate claim 1. If two of the discrete spaces in claim 1 were interpreted as a single discrete space, for example the washer discrete space and the clothes dryer discrete space, Sanka does not reach claim 1 because Sanka does not disclose a single space so dimensioned as to house a washing machine and a clothes dryer in addition to a supplemental drying discrete space for receiving air from an air moving device. In other words, the space (A) alone is not dimensioned to house both a washing machine

and a clothes dryer, the space (B) alone is not dimensioned to house both a washing machine and a clothes dryer, and if the spaces (A) and (B) are combined to cumulatively define a single space dimensioned to house the washing machine and the clothes dryer, then the laundry cabinet of Sanka would not have the supplemental drying discrete space, which is required by claim 1.

For at least the reasons presented above, Sanka does not anticipate claim 1, and claim 1 is patentable over Sanka. Claims 10, 12-14, 20, and 45-47 depend directly or indirectly from claim 1 and are, therefore, not anticipated by Sanka for at least the same reasons Sanka does not anticipate claim 1.

Claim 10 further defines over the Sanka by incorporating a slidable shelf that is slidable into and out of the cabinet assembly. Sanka discloses a partition that is slidable, but the partition remains inside the cabinet regardless of its sliding position. It functions to separate the upper and lower sections and can be retracted to provide access to the top of the washing machine in the lower section. The Sanka partition cannot slide out of the cabinet assembly and be used to support items outside the cabinet assembly. Consequently, Sanka does not disclose a slidable shelf that is slidable into and out of the cabinet assembly, and claim 10 is also independently allowable over Sanka.

Claim 20 depends indirectly from claim 1 through claim 12, which adds a clothes supporting device, and describes the clothes supporting device as comprising at least one horizontal surface having a plurality of perforations permitting air to pass through the horizontal surface. Sanka does not teach or suggest utilizing a perforated horizontal surface to support clothes. The Office Action claims that the partition shown in Fig. 7 of Sanka is perforated; however, one cannot deduce from this figure that the partition is perforated. Rather, the partition is illustrated with horizontal lines on the top surface of the partition; these lines can represent numerous things, such as a textured top surface or partition segments that collapse or fold onto one another when the partition is opened. The text does not appear to address these lines or describe what they represent in any manner. Because Sanka does not disclose a perforated horizontal surface, as required by claim 20, Sanka does not anticipate claim 20.

Claim 45 further defines over Sanka by defining the integrated cabinet structure as comprising an integrated frame structure having a plurality of interconnected frame elements.

The Office Action suggests that Sanka implicitly discloses the cabinet having a frame structure for fastening panels thereto because Sanka discloses the cabinet being formed by installing panels. On the contrary, it is feasible for the panels to be directly connected to one another without a frame structure, such as by using fasteners, rivets, dove-tail joints, and the like, so the disclosure suggested by the Office Action is *not* implicit. Sanka does not appear to disclose in the text or figures an integrated frame structure for its cabinet, and claim 45 is also independently allowable over Sanka.

Claims 1, 12-16, 20, and 45-48 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,811,198 to Baltes ("Baltes"). The rejection is respectfully traversed.

Baltes discloses a drying closet for drying laundry and the like. The drying closet comprises a rear wall with an inner wall panel (9), a door (7) as a front wall, and two side walls 4 that define an interior (21). Fans (11) compress and pump drying air that flows through interior (21), and the air can be heated by a heater element (12). Figure 13 shows an example of the installation of the drying closet; no

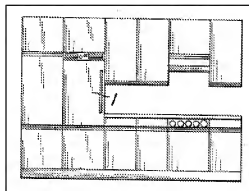


FIG. 13 OF BALTES

further information is given regarding Figure 13. The only other reference to the installation of the drying closet in the specification is at column 7, lines 19-25: "It is of particular advantage that the laundry drying closet according to the invention because of its small depth and its ideal installation dimensions may be installed in modular kitchens or, e.g., in bathrooms at a place above the tub, whereby the depth, height and width dimensions correspond to the standard dimensions of modular components." Exemplary dimensions for the drying closet are 350 mm (13.8 inches) deep by 1150 mm (45.3 in) tall by 600 mm (23.6 in) wide.

Baltes does not disclose every element of claim 1 and, therefore, does not anticipate claim 1. The illustration in Figure 13 does not provide any information about the structure surrounding the drying closet. The specification refers to an installation of the drying closet in a

kitchen or bathroom but does not relate this description to Figure 13. The specification does not teach that the structure surrounding the drying closet is a cabinet assembly comprising panels defining discrete spaces. However, if Applicants are to assume that the structure surrounding the drying closet comprises panels defining discrete spaces, which is not disclosed in Baltes but is assumed in the Office Action, we still are ignorant of the sizes of the spaces and whether they are so dimensioned as to house a washing machine or a clothes dryer. The drawing in Figure 13 is not to scale; the height to width ratio of the dimensions given in the specification for the drying closet is 1.92 (45.3 in/23.6 in), while the height to width ratio of the drying closet in Figure 13 is 1.74 (1.08 in/0.62 in). Because the drawing is not to scale, meaningful information regarding the sizes of the spaces cannot be extracted from the drawing. Even if the drawing was to scale, the drawing is two-dimensional and does not provide any information regarding the depth of the spaces. It is not even possible to tell from the figure the depths of the spaces relative to the depth of the drying cabinet. Baltes, therefore, does not disclose the claimed washer discrete space so dimensioned as to house a washing machine or clothes dryer discrete space so dimensioned as to house a clothes dryer. While Applicants disagree that the limitations in claim 1 only provide intended use as asserted in the Office Action, if the claim is interpreted in this manner, the prior art structure is not capable of performing the intended use and does not meet the claim, even when employing the assumptions made in the Office Action regarding Figure 13. Consequently, Baltes does not anticipate claim 1, and claim 1 is patentable over Baltes.

Claims 12-16, 20, and 45-48 depend directly or indirectly from claim 1 and are, therefore, not anticipated by Baltes for at least the same reasons Baltes does not anticipate claim 1.

Claim 20 depends indirectly from claim 1 through claim 12, which adds a clothes supporting device, and describes the clothes supporting device as comprising at least one horizontal surface having a plurality of perforations permitting air to pass through the horizontal surface. Baltes does not teach or suggest utilizing a perforated horizontal surface to support clothes. The Office Action claims that the fans (11) and the fan openings of Baltes are readable on a horizontal surface with a plurality of perforations. However, the fans (11) are in no way a horizontal surface and, further, are not part of a clothes supporting device. Because Sanka does

not disclose a clothes supporting device comprising a perforated horizontal surface, as required by claim 20, Baltes does not anticipate claim 20.

Claim 45 further defines over Baltes by defining the integrated cabinet structure as comprising an integrated frame structure having a plurality of interconnected frame elements. The Office Action suggests that Baltes implicitly discloses the cabinet having a frame structure for fastening panels thereto because the cabinet is formed by panels. Baltes does not disclose the cabinet being formed by panels, and even if Baltes did disclose the cabinet being formed by panels, it is feasible for panels to be directly connected to one another without a frame structure, such as by using fasteners, rivets, dove-tail joints, and the like, so the disclosure suggested by the Office Action is *not* implicit. Baltes does not appear to disclose in the text or figures an integrated frame structure for a cabinet, and claim 45 is also independently allowable over Baltes.

Claim 48 calls for the washer discrete space and the clothes dryer discrete space to be in open communication with each other such that the washer discrete space and the clothes dryer discrete space collectively define a discrete space so dimensioned as to house the washing machine and the clothes dryer in one of a stacked and side-by-side configuration. Referring to the arguments presented above for claim 1, Baltes does not disclose the claimed washer discrete space or clothes dryer discrete space, much less such spaces in open communication with each other. It follows that claim 48 is not anticipated by Baltes and is patentable over Baltes.

Claims 11, 15, 16, and 21-24 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Sanka in view of U.S. Patent No. 502,237 to Proctor ("Proctor"), as evidenced by Baltes and U.S. Patent No. 5,466,058 to Chan ("Chan"). The rejection is respectfully traversed.

Proctor discloses a cabinet-type drying machine in which the material to be dried is supported in a drying compartment (B) and is subjected to heat furnished by a heating coil (G) in an air heating compartment (C) and circulated through the drying compartment (B) by air moving fans (D). The drying machine includes slides or drawers (F) that are capable of being fully or partially withdrawn from the drying compartment (B) while the material is placed in them and being

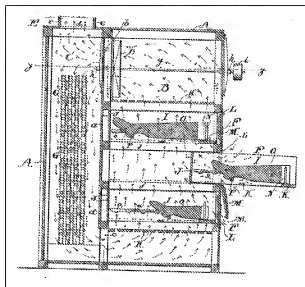


FIG. 1 OF PROCTOR

returned within the drying compartment (B) during the drying process. Each slide (F) is formed by a frame consisting of side pieces (I), back pieces (J), and a pair of cross braces (K). The slides (F) have an open-front and are closed by a door (M) mounted on the drying machine when the slides (F) are fully received within the drying compartment (B).

Chan discloses a modular storage system formed from a plurality of stackable rectilinear storage units. The modules can comprise open storage spaces, drawers, doors, and the like.

The standards for a finding of obviousness must be strictly adhered to. Simply citing one or more prior art references that illustrate different facets of the invention and then concluding that it would be obvious to combine the references to create the applicant's invention is wholly inadequate. The standards for combining prior art references for a finding of obviousness are as follows:

A claimed invention is unpatentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art....The ultimate determination of whether an invention would have been obvious under 35 U.S.C. §103(a) is a **legal conclusion based on underlying findings of fact.**¹

¹ The underlying factual inquiries include (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; and (3) the differences between the claimed invention and the prior art. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966).

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field....Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

Most if not all inventions arise from a combination of old elements....Thus, every element of a claimed invention may often be found in the prior art....However, **identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention....**Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, **there must be some motivation, suggestion or teaching of the desirability of making the specific combination** that was made by the applicant....Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved....In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references....The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art....Whether the Patent Office Examiner relies on an express or an implicit showing, **the Examiner must provide particular findings related thereto....Broad conclusory statements standing alone are not "evidence."**

In Re Werner Kotzab, 217 F.3d 1365; 55 U.S.P.Q.2d (BNA) 1313 (Fed. Cir. 2000)(citations omitted)(emphasis added).

The Office Action has failed to comply with the above requirements for a finding of obviousness under 35 U.S.C. § 103(a) for the combination of Sanka and Proctor. Applicants

contend that combining Sanka with Proctor is improper. The Office Action states that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the drying cabinet of Sanka with the slidable drawers of Proctor for the purpose of providing support and easy access to a plurality of articles which are to be dried. Not only does this statement merely provide generalized reasons for making the combination, but Sanka and Proctor have teachings that would have the opposite effect of deterring a person of ordinary skill in the art to make the combination. Sanka specifically teaches hanging clothes in the upper section by a hanger and does not mention using any other type of clothes support, including a shelf, slide, or drawer that is slidable into and out of the cabinet assembly, in the upper section. Furthermore, Proctor teaches a drying machine that is a stand alone unit with a single heating system for a single air heating compartment that holds a plurality of slides and does not suggest utilizing the drying machine in a cabinet of an integrated laundry center.

In the rejection, the Office Action states that the courts have held that forming one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. However, the integrated laundry center of claim 1 has not been shown to exist in the prior art as two pieces. The integrated laundry center, when equipped with the clothes dryer in the clothes dryer discrete space, has two separate drying functions: items can be dried in the clothes dryer discrete space and in the supplemental drying discrete space. Neither of the prior art references show any type of cabinet assembly with both of these functions, either as one piece or two pieces. The Sanka and Proctor references each disclose an assembly with one drying function; therefore, neither of the references show the integrated laundry center as having been "formerly been formed in two pieces." The Office Action erroneously concludes that the integrated laundry center has been formerly formed in two pieces simply because the individual claim elements are shown in the prior art in separate references. Following this logic, every claim that consists of elements found in the prior art in multiple references is unpatentable. As stated above in *Werner Kotzab*, the fact that all claim limitations are found in the prior art is not sufficient for rendering a claim obvious.

Further, the case law cited in the Office Action is not applicable to the present application. The three cited cases are: *Nerwin v. Erlichman*, 168 U.S.P.Q (BNA) 177 (Bd. Pat.

App. & Inter. 1969), *In re Wolfe*, 116 U.S.P.Q. (BNA) 443 (Cust. & Pat. App. 1958), and *In re Howard*, 150 U.S. 164 (Sup. Ct. 1893).

There appears to be no holding in *Nerwin* related to "forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art." The only potentially relevant discussion in *Nerwin* is directed to whether a single structure can be used to meet two positively stated and separately claimed elements. The Court concludes, "The mere fact that a given structure is integral does not preclude its consisting of various elements." *Nerwin* at 179. This holding has nothing to do with forming in one piece an article which has formerly been formed in two pieces and put together. The Board of Patent Appeals and Interferences, in an unpublished opinion, agrees. In the decision for Appeal No. 97-1147, which was obtained from the website of the United States Patent and Trademark Office at <http://www.uspto.gov/go/dcom/bpai/decisions/fd971147.pdf> on March 9, 2006, the Board opined:

The Examiner's reliance on and citation of *Nerwin v. Erlichman*, 168 USPQ 177, 179 (Bd. Pat. Int. 1969), which according to the examiner held that "constructing a formerly integral structure in various elements involves only routine skill in the art," appears to us to be misplaced. We find no such "holding" in *Nerwin v. Erlichman*. The only statement in that case which we think may be referred to by the examiner is one which indicates that "[t]he mere fact that a given structure is integral does not preclude its consisting of various elements." This statement, in our view, is a construction of the term "integral," and does not appear to stand for the proposition the examiner now urges.

Appeal No. 97-1147, p. 7, ln. 9-p. 8, ln. 1.

In both the *Wolfe* and *Howard* cases, the objects of interest were each shown in a single prior art reference as being made of two pieces. In the former case, *Wolfe* was attempting to patent a dental massage device essentially having a one-piece plastic handle, but the claim read on a prior art reference with the exception of the material used and the one-piece nature of the handle. With respect to the handle, the Court determined that it would be obvious to make a two-piece handle into a one-piece handle. In the latter case, a patent issued to Beckwith disclosed and claimed a stove grate having a thin closed portion and a thick open portion cast

into one piece. A prior art grate in public use before the application for the patent was made contained "all the elements of the Beckwith grate, except that ... it is cast in two pieces, while the Beckwith grate is cast in one piece." *Howard* at 169. The Court decided that this does not involve patentable invention.

The *Wolfe* and *Howard* cases can be distinguished from the present application. First, the prior art in the cases show a two-piece object that still functions as the same object when formed from one piece. The prior art two-piece handle and the one-piece handle both function as a handle; the prior art two-piece grate and the one-piece grate both function as a grate. Assuming, *arguendo*, that the integrated laundry center can be formed by a combination of Sanka and Proctor, the resulting laundry center does *not* function in the same manner as the individual prior art assemblies. For example, as discussed above, the Sanka and Proctor assemblies each have an associated single drying function, while the integrated laundry center has double drying functions. The difference between single and double drying functions is not trivial; with two drying functions, a user can dry two loads simultaneously or can split a load into items suitable for the first drying function (e.g., a drum type clothes dryer) and items suitable for the second drying function (e.g., a stationary clothes dryer). Second, the *Wolfe* and *Howard* cases both rely on a single prior art reference to show the item of interest as being formed by two pieces, while the Office Action employs more than one prior art reference. As discussed above, the utilization of multiple prior art references in the manner exercised in the Office Action to demonstrate that an item has formerly been formed by two pieces is inappropriate.

The Office Action further relies on reasonable expectation of success and also asserts that "the combining of the common knowledge washing/drying cabinet components of Sanka and Proctor to arrive at applicant's integrated laundry center would be within the level and skill of one having ordinary skill in the art at the time the invention was made in order to provide a laundry center with comprehensive washing and drying functionality." This is an unsupported position. The Office Action provides no convincing discussion or evidence ascertaining the level of ordinary skill in the art or showing of the reasonable expectation of success. In an attempt to provide evidence, the Office Action points to Baltes and Chan. Baltes discloses a drying closet that is assumed to be shown in a multi-spaced cabinet system. If the intent is to use Baltes to

show employing an air moving device in a cabinet system, then Baltes teaches no more than Sanka and, therefore, provides no evidence outside of the Sanka teaching. Chan merely discloses a modular storage system; Chan is not relevant to a laundry center and has no disclosure of providing drying functions in a cabinet assembly. The only evidence provided by Chan is that it is well known to provide modular cabinets. The invention of claim 1, however, is more involved than a simple cabinet structure; it is a laundry center adapted to provide drying functions.

Assuming, *arguendo*, that the combination of Sanka and Proctor is tenable, the combination still does not reach the claimed invention. As discussed above, Sanka alone does not reach claim 1, and modifying Sanka with Proctor does not incorporate the claim elements absent in Sanka. The alleged combination would essentially result in the Sanka cabinet with the upper section, including the clothes dryer, replaced with the Proctor drying machine, which is, at best, a dryer *or* a supplemental dryer but not an entire system with a dryer *and* a supplemental dryer. As discussed above, claim 1 recites a cabinet having a plurality of panels that define a washer discrete space so dimensioned as to house a washing machine, a clothes dryer discrete space so dimensioned as to house a clothes dryer, and a separate supplemental drying discrete space and an air moving device to supply air to the supplemental drying discrete space. The alleged combination does not include these features. In particular, the alleged combination does not have a plurality of panels that define *three* discrete spaces: a washing machine discrete space, a clothes dryer discrete space, and a supplemental drying discrete space. Rather, the alleged combination has panels that define only *two* of the discrete spaces. Furthermore, the differences between the alleged combination and the integrated laundry center of claim 1 are not obvious in view of the alleged combination. Claim 1 is, therefore, patentable over the alleged combination.

Because claims 11, 15, 16, and 21-24 depend, indirectly, from claim 1, claims 11, 15, 16, and 21-24 are also patentable over Sanka in view of Proctor.

Claim 11, which depends from claim 1 through claim 10, further defines over the alleged combination and calls for at least two of the slidable shelves, wherein one is usable as a clothes folding shelf and the other is usable as a retractable support surface. The slides of Proctor, which

are incorporated in the alleged combination, are formed by the frame consisting of the side pieces, the back pieces, and the pair of cross braces and do not provide a shelf, much less a shelf that can be used as a folding shelf as the clothes would fall between the cross braces or between the back piece and one of the cross braces. Further, it would not be obvious to one of ordinary skill in the art to incorporate such a shelf into the alleged combination. It therefore follows that claim 11 is independently patentable over the alleged combination.

Claim 21 depends from claim 20, which describes the clothes supporting device as comprising at least one horizontal surface having a plurality of perforations permitting air to pass through the horizontal surface. Claim 21 specifies that the supplemental drying discrete space comprises a horizontal drying discrete space including a plurality of the perforated horizontal surfaces stacked on top of and spaced from one another. The alleged combination does not include a clothes supporting device comprising a perforated horizontal surface. Similar to the argument presented above with respect to claim 11, the slides of Proctor are formed by a frame and do not include a horizontal surface that can support clothes, much less a perforated horizontal surface, as required by claim 20, or a plurality of stacked and spaced perforated horizontal surfaces, as required by claim 21. Additionally, it would not be obvious to one of ordinary skill in the art to incorporate these features into the alleged combination. Thus, claim 21 is independently patentable over the alleged combination.

Claims 22 and 23 depend from claim 20 and specify that the clothes supporting device is at least one drawer (claim 22) or a plurality of the drawers (claim 23) with a bottom surface formed by the perforated horizontal surface. The alleged combination does not include a clothes supporting device comprising one or more drawers, wherein each drawer has a perforated bottom surface. Similar to the argument presented above with respect to claim 21, the frame structure of the Proctor slides do not constitute a horizontal clothes supporting surface, much less a perforated horizontal surface for supporting clothes. Additionally, it would not have been to include a drawer with such a bottom surface in the alleged combination. Consequently, claims 22 and 23 are independently patentable over the alleged combination.

Claim 24 further defines over the alleged combination by adding a decorative exterior front fascia panel that covers a front surface of the drawer from claim 22. The slides of Proctor,

which are utilized to make the alleged combination, do not have a front panel that covers a front surface of the slide and, therefore, do not have a decorative front fascia panel. Rather, the Proctor slides have an open-front and are closed by the door mounted on the drying machine when fully received within the drying compartment. Further, it would not be obvious to one of ordinary skill in the art to incorporate a decorative front fascia panel into the alleged combination. Thus, claim 24 is also independently patentable over the alleged combination.

Claims 17-19 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Sanka or Baltes in view of U.S. Patent No. 5,720,108 to Rice ("Rice"), as evidenced by Baltes and Chan. The rejection is respectfully traversed.

Rice discloses a portable drying device that can be used for drying or warming the insides of boots, gloves, mittens, and other clothing articles used for protecting extremities of a person's body in snow or inclement weather. The drying device includes a heater/air blower assembly (16) for producing a blowing stream of hot air (A) and a duct assembly (18). The duct assembly (18) includes a manifold (19) for splitting the air stream from the air blower assembly (16) into two streams. A pair of hoses or duct tubes (20, 22) conduct the two air streams (A) from the manifold (19) to the interiors of a pair of boots, gloves, or other clothing articles to be dried, and optional nozzles (24, 26) direct the air stream (A) in the boots (12) or (gloves 14). The air stream (A) discharged through hose nozzles (24, 26) circulates within the interior of the boots (12) or gloves (14) before exiting, thus warming and drying the inside (28) of the boots (12) or gloves (14). The portable dryer is designed to be stored in a pair of boots (12) when not in use.

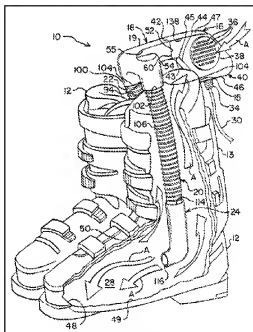


FIG. 1 OF RICE

The Office Action has failed to comply with the requirements cited above for a finding of obviousness under 35 U.S.C. § 103(a) with respect to a combination of Sanka or Baltes with Rice. The Office Action asserts that the combination would be obvious for the purpose of improved, more efficient drying of hollow articles, such as shoes; this statement merely provides a generalized, unsupported reason for making the combination.

As stated in § 2143.01 of the MPEP, "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." The Office Action suggests combining the washing/drying cabinet components of Sanka or Baltes with the portable boot dryer of Rice. As a correction, Baltes does not disclose any washing cabinet components. Nonetheless, either combination would destroy the intended purpose of Rice. Rice specifically describes an independently operable and portable boot and glove dryer and does not discuss utilizing the dryer in combination with any other device, much less in a cabinet of an integrated laundry center. Not only would it not be obvious to one of ordinary skill in the art to incorporate the portable boot dryer of Rice in the cabinet of Sanka or the drying closet of Baltes, considering that a primary feature of the Rice boot dryer is that it is portable and can be used independently of other devices, but making such an incorporation renders the Rice boot dryer unsatisfactory for its intended portability purposes. It is therefore submitted that the alleged combination of Sanka or Baltes in view Rice is inappropriate.

The Office Action essentially repeats the statements from the Sanka/Proctor rejection regarding the combining of the common knowledge of the prior art references to arrive at applicant's integrated laundry center being within the level and skill of one having ordinary skill in the art at the time the invention was made. In an attempt to provide evidence ascertaining the level of ordinary skill in the art, the Office Action again points to Baltes and Chan. Correspondingly, the arguments presented above for the Sanka/Proctor rejection apply here. Neither Baltes nor Chan provide any evidence of the level and skill of one having ordinary skill in the art related to incorporating shoe dryers into a laundry cabinet or drying closet.

Even if the combination were proper, the combinations of the autonomous, portable Rice boot dryer with Sanka or Baltes do not correct the deficiencies discussed above with respect to

Serial No. 10/686,798
Filed: October 16, 2003
Page 32 of 32

Examiner: Joseph L. Perrin
Group Art Unit: 1746

Sanka or Baltes relative to claim 1. At best, the combination of Sanka and Rice would comprise a cabinet with separate spaces for storing a washing machine and a clothes dryer and a portable boot dryer somehow attached to the cabinet, perhaps through an electrical cord. The combination of Baltes and Rice would comprise a drying closet with a portable boot dryer somehow attached to the drying closet, also perhaps through an electrical cord. Thus, the alleged combinations of Sanka/Rice and Baltes/Rice do not reach claim 1, nor would claim 1 be obvious in view of the alleged combinations. Claims 17-19 depend, indirectly, from claim 1. Consequently, claims 17-19 are not obvious and are not unpatentable over Sanka or Baltes in view of Rice

Applicants have added new claims 49-56, which distinguish over the prior art and should be allowed.

It is respectfully submitted that the claims are allowable over the prior art of record. Prompt notification of allowability is respectfully requested.

Respectfully submitted,

RICHARD A. SUNSHINE ET AL.

Dated: November 27, 2006

By: /Mark A. Davis/
Mark A. Davis, Reg. No. 37,118
McGARRY BAIR PC
171 Monroe Avenue, NW, Suite 600
Grand Rapids, Michigan 49503
616-742-3500

G0257837